

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEFF RUSSELL TRAXTLE,

Petitioner,

Civil No. 07-1621-TC

v.

FINDINGS AND
RECOMMENDATION

DON MILLS,

Respondent.

COFFIN, Magistrate Judge.

Petitioner filed a petition for habeas corpus relief under 28 U.S.C. § 2254, challenging his 1997 convictions for Aggravated Murder, Felony Murder and Kidnapping I on various grounds. See, Petition (#2).

On January 4, 2008, respondent filed a Response (#9)

moving to deny petitioner's Petition and dismiss this proceeding on the ground that the petition was not filed within the one year statute of limitations provided in 28 U.S.C. § 2244(d).

Petitioner has not filed a reply brief, requested an extension of time in which to do so, or otherwise contacted the court since he filed his Petition on October 26, 2007.

Petitioner's Petition came under advisement by the court on March 19, 2008.

Respondent's Answer (#10), uncontroverted Exhibits and Response (#9) establish that petitioner's Petition was not filed within the applicable statute of limitations. Petitioner's Petition (#2) should be denied as time barred and for failure to prosecute. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual

determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judges's recommendation.

DATED this 27 day of June, 2008.



Thomas M. Coffin
United States Magistrate Judge